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ICC Staff Released from Detention in Libya

Coalition Welcomes Release and Calls on International Community to Reaffirm Support for the Court

New York / The Hague—The Coalition for the International Criminal Court—a global network of more than 2,500 non-governmental and civil society organizations in 150 countries advocating for a fair, effective and independent International Criminal Court (ICC)—today expressed great relief for the release of four ICC staff members detained in Libya since 7 June 2012 while undertaking a mission authorized by ICC judges and approved by the interim Libyan government to visit with Saif al-Islam Qaddafi. The Coalition called on the international community to reaffirm its support for the Court and to work to ensure that its legally mandated activities are allowed to continue unimpeded. The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity and genocide.

The four staff members—Alexander Khodakov, an external relations and cooperation senior adviser at the ICC Registry; Esteban Peralta Losilla, chief of the counsel support section; Helene Assaf, an ICC translator; and Melinda Taylor, counsel in the Office of Public Counsel for the Defence—were released from detention by authorities in Zintan, Libya and are to return to The Hague, to be reunited with their respective families. The release came on the day of a visit by ICC President Judge Sang-Hyun Song to Libya. ICC officials and diplomats from various states—including Australia, Lebanon, Russia and Spain—have also been involved in negotiations with the competent Libyan authorities to secure the release of the officials.

“The Coalition welcomes the release of the four ICC staff members today, and we express our relief that this was achieved in a safe manner,” said Leila Hanafi, regional coordinator for the Middle East and North Africa at the Coalition for the ICC. “However, that this situation arose at all is extremely troubling; the ICC is a judicial institution mandated to investigate grave crimes in states accepting its jurisdiction or referred to it by the United Nations Security Council, as is the case with Libya, and these staff members had been mandated by the Court to represent and protect the rights of Saif Al-Islam Gaddafi, accused of committing those grave crimes, until he was able to exercise his right to select his own counsel, rights guaranteed under the Rome Statute.”

“At this time, we call upon the international community to reaffirm its support for the Court, underlining that its international employees and those appointed to protect the rights of defendants and victims alike should be allowed carry out their duties unimpeded, wherever the ICC has initiated an investigation,” Hanafi added.

The four staff members had been detained after having traveled to Libya on 6 June to meet with Saif Al-Islam Gaddafi—a former senior official in the Libyan government and son of former Libyan leader of Muammar Gaddafi—who is wanted by the ICC for crimes against humanity allegedly committed in Libya since 15 February 2011. The delegation had traveled to Libya to discuss the option of Saif Al-Islam appointing counsel of his own choosing to represent him. The Court had temporarily appointed Melinda Taylor to represent and protect the rights of Saif Al-Islam until he was able to exercise his right to select his own counsel. The visit had been arranged by a decision of ICC Pre-Trial Chamber I on 27 April 2012, with the agreement of the Libyan government.

On 22 June, the Libyan attorney-general, Abdelaziz Al-Hassadi, visited ICC officials in The Hague in an effort to resolve the crisis, with the Court subsequently stating that it “deeply regrets any events that may have given rise to concerns” and that “information reported by the Libyan authorities will be fully investigated in accordance with ICC procedures following the return of the four staff members.”

“We understand that allegations have been made against ICC staff regarding conduct during their mission to Libya,” said William Pace, convenor of the Coalition. “It is important that any such allegations are addressed and we are confident in the Court’s stated intention to fully investigate them in accordance with ICC procedures upon their return to The Hague,” Pace added. “However, as this was an official, privileged mission mandated by ICC judges and facilitated by Libyan government, any contact with the accused, in this case, Saif Al-Islam, with duly appointed counsel must be confidential and free from unacceptable interference. Any allegations of misconduct by ICC representatives by a government should be reported directly to ICC judges.”

On 15 June, the UN Security Council expressed its serious concern over the detention of the four, and urged Libyan authorities at all levels and all concerned to work towards their immediate release. It emphasized that it is the legal obligation of Libya under the Council's Resolution 1970 to cooperate fully with and provide any necessary assistance to the ICC pursuant to that resolution.

"The Coalition also acknowledges the prompt response by the UN Security Council to the detention of the ICC staff in its call for Libya to cooperate with the Court and fulfill its obligations under the Council's Resolution 1970, which referred the situation in Libya to the Court in the first place in February 2011," continued Pace. "This is precisely the type of political backing for the ICC required from all stakeholders in the Rome Statute system, be they international organizations or states parties. It is also important that the Security Council play a proactive role in facilitating cooperation in other situations they are responsible for referring."

The ICC and Coalition members also issued a number of statements calling for the release of the staff. Meanwhile, Coalition member Amnesty International launched an online petition calling on the Libyan authorities to immediately release the ICC officials and others in prolonged detention in the country.

Saif Al-Islam has been in detention in Zintan, Libya, since 19 November 2011. On 1 June 2012, ICC Pre-Trial Chamber I suspended the execution of the order to transfer Saif Al-Islam to the Court pending a resolution of Libya's challenge to the admissibility of the ICC case under Article 19 of the Rome Statute.

Background: On 3 March 2011, the ICC prosecutor opened a formal investigation into the situation in Libya. The announcement came after the United Nations Security Council adopted Resolution 1970 (2011) on 26 February 2011, which referred the situation in Libya, a state not party to the Rome Statute, to the ICC. It was the second time that a situation was referred to the Court by the UNSC under its Chapter VII authority and the first time such a resolution was passed unanimously.

On 27 June 2011, judges of ICC Pre-Trial Chamber I issued arrest warrants against Libyan leader Muammar al-Gaddafi, his son Saif al-Islam al-Gaddafi and Libyan head of intelligence Abdullah al-Senussi for alleged crimes against humanity committed in Libya since 15 February 2011. On 19 November 2011, Saif Al-Islam Gaddafi was arrested by Libyan authorities. On 22 November 2011, PTC I terminated the case against Muammar al-Gaddafi following his death. On 17 March 2012, Abdullah Al-Senussi was arrested in Mauritania. On 19 November 2011, Al-Islam Gaddafi was detained in Zintan, Libya, and on 4 April 2012, PTC I rejected a second request by the Libyan authorities to postpone his surrender to the Court. An appeal by Libya against this order was dismissed by the Appeals Chamber on 25 April 2012. On 1 May 2012, Libya challenged the admissibility of the cases before the Court and the obligation to surrender Saif Al-Islam Gaddafi was suspended.

The prosecutor can only investigate situations in non-state parties, such as Libya, when the UNSC refers the situation to the prosecutor in accordance with Article 15(b) of the Rome Statute, or where a non-state party has submitted a declaration to the Registrar of the ICC accepting the jurisdiction of the court in its territory pursuant to Article 12(3) of the Statute. A referral by the UNSC to the ICC does not automatically trigger an investigation, however, as the court operates independently of the UN. Rather, it is the

prosecutor's decision to determine whether an investigation is warranted. On 2 November 2011, the prosecutor addressed the UN Security Council on progress made so far in his investigation. Further cases may be opened as part of the prosecutor's ongoing investigations into the hostilities in Libya.

The ICC is the world's first permanent international court to prosecute war crimes, crimes against humanity, and genocide. Central to the Court's mandate is the principle of complementarity, which holds that the Court will only intervene if national legal systems are unwilling or unable to investigate and prosecute perpetrators of genocide, crimes against humanity and war crimes. There are currently seven investigations before the Court: the Central African Republic; Cote d'Ivoire; the Democratic Republic of the Congo; Darfur, the Sudan; Uganda; Kenya; and Libya. The ICC has publicly issued 20 arrest warrants and nine summonses to appear. The Court issued a judgment in its first trial on 14 March 2012. Two other trials are ongoing. The ICC prosecutor has also made public that he is conducting seven preliminary examinations on four continents: Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea and Nigeria.

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit: www.coalitionfortheicc.org.

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